

Environmental Protection Agency Public Hearing on
Proposed Rulemaking on Strengthening Transparency in Regulatory Science

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U.S. Chamber of Commerce Global Energy Institute

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Good afternoon. Thank you for the opportunity to present testimony on this important issue.

The U.S. Chamber of Commerce strongly supports the intent of the proposed rule and applauds EPA for finally addressing a longstanding problem inherent in much of its regulatory decision-making processes.

While the agency's proposed reforms are clearly controversial, they are grounded in a universally accepted democratic principle: citizens have a right to the data and information that are used in the development of public policy.

This spirit of openness with respect to the regulatory process is found throughout government. It is enshrined in statute (known as "the Shelby Amendment") and countless federal directives and EPA memos reinforce the principle and detail guidance for implementing it.

It is also supported by experts of all political stripes. In 2012 congressional testimony, President Obama's science advisor Dr. John Holdren unequivocally endorsed this idea, stating that "absolutely, the data on which regulatory decisions and other decision are based should be made available to the Committee and should be made public." The chair of the EPA's science advisory board during the Obama Administration subsequently echoed this sentiment.

Unfortunately, while this principle is generally accepted, EPA has not followed it consistently in practice. In fact, for many years EPA has relied upon non-public data to justify its aggressive regulatory agenda. The most egregious but certainly not the only example of this involves two controversial studies undertaken in the 1980s that suggest a linkage between certain types of particulate matter ("PM_{2.5}") and health outcomes. The data associated with these decades-old studies has never been made public, but EPA has nonetheless used them to monetize

regulatory benefit claims that dominate the communications and regulatory marketing associated with nearly all of its major rules.

(It is also worth pointing out here that, separate from the studies themselves, EPA's benefit monetization is highly subjective and controversial in and of itself. For example, in 2009, the agency modified its assumptions in a manner that resulted in a *quadrupling* of purported benefits, without any change to the underlying data used to inform monetization estimates. We hope that these sorts of subjective and questionable practices will be addressed as the agency concurrently examines transparency associated with the development of regulatory cost-benefit analyses.)

The scale of this misleading practice is mind-boggling. Data compiled by the U.S. Chamber found that, between 2000 and 2016, EPA issued 62 rules claiming a total of \$923 billion in regulatory benefits. Incredibly, \$898 billion of these benefits—or 97.2 percent—were monetized based on the non-public data associated with PM_{2.5}. In fact, these benefits comprise nearly 80 percent of all regulatory benefits across the *entire federal government*.

Even though the vast majority of these rules were not intended to address PM_{2.5}, and even though the vast majority of their corresponding claimed benefits came from areas of the country that already deemed safe and in compliance with EPA's PM_{2.5} standard, the agency repeatedly touted these figures to build public support for its regulations.

It is one thing to be cavalier about transparency principles when their application has little or no import to public policy, but federal rules that impact millions of people and billions of dollars should be held to a higher standard.

For these reasons, we applaud EPA's effort to establish and meet a higher standard, and we commend the agency doing so through the formal public comment and rulemaking process rather than by simply instituting a new policy. As EPA makes clear throughout the proposed rule, these changes will require considerable effort and cooperation. But ultimately, the agency aims to ensure that "over time, more of the data and models underlying the science that informs regulatory decisions is available to the public for validation" and to more broadly "change agency culture and practices regarding data access."

The outcome will not just lead to better policy, it will improve the integrity of the rulemaking process, and in doing so, increase public trust in and support for EPA itself. Whether you agree with the current Administration's regulatory approach or not, that is a good thing.

With that fundamental background in mind, we would like to call attention to six high-level areas that warrant emphasis and attention as the agency works to finalize and implement the proposed rulemaking.

1. Protect sensitive information. As the proposal rightly notes, EPA's effort to increase access to regulatory data must adhere to longstanding statutory requirements for "the protection of privacy and confidentiality of research participants, protection of proprietary data and confidential business information, and other compelling interests." This is paramount, and in order to build upon this principle during implementation of the proposed rule, additional guidance explaining how agency officials should advance transparency goals while ensuring protection of such sensitive information under varied circumstances would be beneficial.
2. Formally coordinate with other agencies working to address similar regulatory transparency challenges. Whether through regulatory proceedings, research protocols, or countless other examples involving data transparency, numerous federal agencies are facing similar challenges related to data transparency and protection of sensitive information. Drawing on the expertise and experience of other agencies across the federal government through active and ongoing coordination will improve EPA's ability to make this effort a success. Ideally, such an effort would be undertaken in concert with the White House Office of Information and Regulatory Affairs.
3. Develop further guidance and processes for employing the administrator's exemption authority. Given the scope and complexity of the proposed rulemaking, it is important and appropriate that the Administrator be provided the flexibility to exempt certain data and information from disclosure requirements. However, EPA should work to develop systematic guidance for determining how and when such authority should be applied.
4. Consider alternative approaches to balancing tradeoffs between goals related to transparency and maximizing the quantity and quality of information relied upon. In addition to the Administrator's exemption authority, in certain situations—particularly when relevant publicly available data is limited—the agency may want to consider a flexible and non-binary approaches to transparency requirements. For example, this could include assigning greater decision-making weight to publicly available data while

still allowing for the consideration of non-transparent data. Such an approach may be particularly useful for retrospective studies in which it is impossible or impractical to make data available. This concept should be concurrently explored and addressed through the agency's proposed rule to increase the consistency and transparency of consideration of costs and benefits in the rulemaking process.

5. Where possible, work to protect and de-identify sensitive information to allow for its complete use in regulatory decision-making. In circumstances where data associated with "pivotal regulatory science" driving agency decision-making is unavailable due to privacy or other concerns, the agency should consider undertaking efforts to de-identify and protect sensitive information to allow for it to be made available in a manner sufficient for independent review and validation. Such an approach would allow the agency to achieve transparency goals without restricting the use of key scientific information. Here again, coordination with other federal agencies could assist. For example the Department of Health and Human Services and National Institute of Standards and Technology have developed tools and guidance to de-identifying personally identifiable information.

6. Ensure that relevant transparency information is incorporated into public communications and marketing materials associated with regulatory initiatives. EPA's laudable efforts to increase the transparency of information used in regulatory decision-making should be accompanied by improved explanations of the respective roles of transparent and non-transparent information in associated communications and advocacy materials. For example, if the claimed benefits of a proposed action are based on non-transparent information, the agency should adopt a practice of disclosing this in press releases and fact sheets. Paired with an enhanced focus on risk communication, this practice will lead to greater public understanding of the scientific and other inputs that drive important EPA policies.

In 1983, then-EPA Administrator William Ruckelshaus issued a well-known memo declaring that the agency should operate as if it were "in a fishbowl." This proposed rule, while certainly fraught with implementation challenges, is a critical step toward finally adhering to Ruckelshaus' simple and direct advice.

Thank you for your time and consideration today.